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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1775, 1776, 1778, and 1784

[Docket No. RUS-20-WATER-0018]

RIN 0572-AC47

Implementation of Water and Environmental Provisions of the Agricultural Improvement Act of 2018

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is issuing a final rule to implement statutory provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill). The intent of this rule is to modify existing regulations to include the statutory revisions authorized by the 2018 Farm Bill.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jim Wehrer, Rural Development, U.S.

Department of Agriculture, STOP, 1400 Independence Ave., SW, Washington, DC 20250-1550,
Telephone number: (605) 660-0981.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 - Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988 - Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Catalog of Federal Domestic Assistance and Executive Order 12372 - Intergovernmental Consultation

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under numbers 10.761, Technical Assistance and Training Grants, 10.763, Emergency Community Water Assistance Grants, and 10.862, Household Water Well System Grant Program, and 10.760, Rural Alaskan Village Grants, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The Catalog is available on the Internet at <https://beta.sam.gov>. The SAM.gov website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic

Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's online bookstore at <http://bookstore.gpo.gov>.

Executive Order 13771

The programs affected by this rulemaking are not subject to Executive Order 13771 as they are considered transfer programs and are exempt from the Executive Order.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Environmental Impact Statement

This final rule has been examined under Agency environmental regulations at 7 CFR part 1970. The Administrator has determined that this is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement is not required.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

E-Government Act Compliance

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Rural Development has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe would like to engage in consultation with Rural Development on this rule, please contact Rural Development’s Native American Coordinator at (720) 544–2911 or AIAN@usda.gov.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After

review and analysis of the rule and available data, it has been determined that implementation of the rule is not likely to adversely or disproportionately impact very low, low and moderate income populations, minority populations, women, Indian tribes or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this rule.

Information Collection and Recordkeeping Requirements

This final rule contains no new reporting or recordkeeping burdens under OMB control numbers 0572-0110, 0572-0112, 0572-0139, and 0572-0150 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, familial/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992, submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) Fax: (202) 690-7442; or
- (3) E-Mail: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Background

Rural Development is a mission area within the USDA comprising the Rural Utilities Service, Rural Housing Service, and Rural Business/Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through more than 40 programs aimed at creating and improving housing, businesses, and infrastructure throughout rural America.

The Agriculture Improvement Act of 2018 (2018 Farm Bill) made mandatory changes to several programs administered by the Water and Environmental Programs of the Rural Utilities Service, including: the Technical Assistance and Training (TAT) Grant Program; the Emergency

and Imminent Community Water Assistance Grant (ECWAG) Program; the Household Water Well Systems (HWWS) Grant Program; and the Rural Alaskan Village Grant (RAVG) Program.

The modifications to these regulations will allow RUS to fully implement changes to the programs required by the 2018 Farm Bill. These changes will also allow for expanded assistance to rural communities to improve safe, reliable drinking water, and sanitary sewage treatment for households in rural areas.

The Technical Assistance and Training (TAT) Grant Program (7 CFR part 1775) provides grants to enable qualified, private nonprofits to provide technical assistance and training to identify and evaluate solutions to water and waste problems; prepare applications for water and waste disposal loans and grants; and improve the operation and maintenance of existing water and waste facilities in eligible rural areas. The modifications include adding two additional program purposes focused on enhancing the long- term sustainability of rural water and waste systems; addressing the contamination of drinking water and surface water supplies by emerging contaminants; and revising the priority factors to include providing technical assistance and training to address water supply systems or waste facilities that are unhealthful.

The Emergency and Imminent Community Water Assistance Grants (ECWAG) Program (7 CFR part 1778) assists the residents of rural areas and small communities that have experienced a significant decline in quantity or quality of water, or in which such a decline is considered imminent, to obtain or maintain adequate quantities of water that meets the standards set by the Safe Drinking Water Act (42 U.S.C. 300f et. seq.). The modifications include: revising the project priority factors to include contamination of water supplies; extending the use of grant funds to include inadequate water supplies due to an event, including drought, severe weather, or contamination; and increasing the maximum grant amount to \$1,000,000.

The Household Water Well System (HWWS) Grant Program (7 CFR part 1776) assists qualified nonprofits and tribes to create a revolving loan fund to increase access to clean, reliable water for households in eligible rural areas. Grant funds may be used to help a nonprofit create a revolving loan fund for eligible individuals who own and occupy a home in an eligible rural area, to construct, refurbish, or service individually-owned household water well systems. The modifications include: changing the program name from Household Water Well Systems to Rural Decentralized Water Systems; adding a definition for Decentralized Water System; revising the income eligibility language in the definition of Eligible individual from 100 percent of the median nonmetropolitan household income for the State to 60% of the median nonmetropolitan household income for the State; modifying the loan amount terms for recipients; and including new eligibility requirements for receipt of a Decentralized Water System subgrant.

The Rural Alaska Village Grant (RAVG) Program (7 CFR part 1784) provides assistance to rural or native Alaskan villages to provide for the development and construction of water and wastewater systems to improve the health and sanitation conditions in these villages through removal of dire sanitation conditions. A modification to the definition of “Rural or Native Villages in Alaska” will be made to bring it in line with section 306D of the CONACT.

List of Subjects

7 CFR Part 1775

Business and industry, Community development, Community facilities, Grant programs-housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, and Watersheds

7 CFR Part 1776

Agriculture, Community development, Community facilities, Credit, Grant programs-housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds.

7 CFR Part 1778

Community development, Community facilities, Grant programs-housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, and Watersheds.

7 CFR Part 1784

Agriculture, Community development, Community facilities, Grant programs – housing and community development, Reporting and recordkeeping requirements, Rural areas, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply, Watersheds.

Accordingly, for reasons set forth in the preamble, 7 CFR parts 1775, 1776, 1778, and 1784 are amended as follows:

PART 1775 – TECHNICAL ASSISTANCE GRANTS

1. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005

Subpart B – Grant Application Processing

2. Amend §1775.11 by revising paragraph (i) to read as follows:

§ 1775.11 Priority.

* * * * *

(i) Projects primarily providing “hands on” technical assistance and training, i.e., on-site assistance as opposed to preparation and distribution of printed material, to communities with existing water and waste systems which are experiencing operation and maintenance or management problems; and/or provide technical assistance and training to water supply systems or waste facilities that are unhealthful (i.e. emerging contaminants detected in drinking water and surface water supplies.)

* * * * *

Subpart C – Technical Assistance and Training Grants

3. Amend §1775.36 by revising paragraph (e) and adding paragraphs (f) and (g) to read as follows:

§ 1775.36 Purpose.

* * * * *

(e) Identify options to enhance the long-term sustainability of rural water and waste systems, including operational practices, revenue enhancements, partnerships, consolidation, regionalization, or contract services.

(f) Address the contamination of drinking water and surface water supplies by emerging contaminants, including per- and polyfluoroalkyl substances.

(g) Pay the expenses associated with providing the technical assistance and/or training authorized in paragraphs (a) through (f) of this section.

PART 1776 –RURAL DECENTRALIZED WATER SYSTEMS

4. The authority citation for part 1776 continues to read as follows:

Authority: 7 U.S.C. 1926e.

5. Revise the heading to part 1776 to read as set forth above:

PART 1776 –RURAL DECENTRALIZED WATER SYSTEMS

PART 1776—[AMENDED]

6. In part 1776, revise all references to “Household Water Well System” to read “Decentralized Water System” and the acronym “HWWS” to read “DWS”.

Subpart A - General

7. Revise § 1776.1 to read as follows:

§ 1776.1 Purpose.

This part sets forth the policies and procedures for Rural Utilities Service making grants to private nonprofit organizations for the purpose of providing loans and subgrants to eligible individuals for the construction, refurbishing, and servicing of individually owned household water well systems and individually owned decentralized wastewater systems in rural areas that are or will be owned by the eligible individuals.

8. In § 1776.3:

a. Amend the definition of *Eligible individual* by removing the term “100 percent” in the first sentence and adding in its place “60 percent”;

b. Add the definitions of “Contamination”, “Decentralized Water System”, “Septic System”, and “Subgrants”; and

c. Remove the definitions of “HWWS”, “HWWS grant”, and “HWWS loan.”

The additions read as follows:

§ 1776.3 Definitions

* * * * *

Contamination means any physical, chemical, biological, or radiological substance of matter in water, either exceeding or having potential to exceed State or Federal standards.

* * * *

Decentralized Water System (DWS) means either a household water well or a septic system.

This definition also includes decentralized wastewater systems which are onsite or clustered systems used to collect, treat, and disperse or reclaim wastewater from a small community or service area.

* * * * *

Septic System means systems designed to treat wastewater from household plumbing fixtures through both natural and technological processes.

* * * * *

Subgrants means a grant awarded to a decentralized water system owner in order to refurbish or replace a well or septic system.

* * * * *

Subpart B – DWS Grants

9. Amend § 1776.10 by revising paragraph (b) to read as follows:

§ 1776.10 Grant agreement.

* * * * *

(b) The grantee or RUS may initiate an amendment or modification to the grant agreement to provide for a loan limit up to \$15,000. No change in the grant agreement requested by the grant recipient will be effective unless approved in writing by RUS.

10. Amend § 1776.12 by revising the section heading and paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 1776.12 Use of DWS Grant proceeds.

(a) Except as otherwise provided in the next paragraph. The DWS grant process shall be used solely for the purpose of providing loans to eligible individuals for the construction, refurbishing, and servicing of individual decentralized water systems in rural areas that are or will be owned by the eligible individuals.

* * * * *

(d) In the event of ground well water contamination, the Secretary shall allow a loan or subgrant to be made with grant funds under this section for the installation of water treatment where needed beyond the point of entry, with or without the installation of a new water well system.

(e) Any entities responsible for fouling a drinking water supply are not eligible to be the recipients of an award for this program.

Subpart C – DWS Loans

11. Amend § 1776.15 by revising paragraph (a)(3) and by adding paragraphs (d) and (e) to read as follows:

§ 1776.15 Terms of loans.

* * * * *

(a) * * *

(3) Shall not exceed \$15,000 for each water well system or decentralized wastewater system described in §1776.1.

* * * * *

(d) The Agency will determine the maximum subgrant limit for each DWS applicant.

(e) The applicant will determine subgrant funding levels to individual subgrantees based on established criteria described in the workplan.

PART 1778 – EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS

12. The authority citation for part 1778 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

13. Amend § 1778.3, by revising the section heading to read as follows:

§ 1778.3 Purpose.

14. Amend § 1778.4 by adding a definition of *Contamination* to read as follows:

§ 1778.4 Definitions.

* * * * *

Contamination, Any physical, chemical, biological, or radiological substance of matter in water, either exceeding or having potential to exceed State or Federal standards.

* * * * *

15. Amend § 1778.6 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 1778.6 Eligibility.

* * * * *

(b) Any entities responsible for willfully or purposely fouling a drinking water supply are not eligible to be the recipients of an award under this program.

* * * * *

16. Amend § 1778.7 by redesignating paragraph (d)(6) as paragraph (d)(7) and adding a new paragraph (d)(6) to read as follows:

§ 1778.7 Project priority.

* * * * *

(d) * * *

(6) *Contamination.* The project will address the contamination that poses a threat to human health or the environment and was caused by circumstances beyond the control of the applicant – 10 points.

17. Amend § 1778.9 by revising paragraph (k) to read as follows:

§ 1778.9 Uses.

* * * * *

(k) Provide potable water to communities through means other than those covered above for no more than 120 days when a more permanent solution is not feasible in a shorter time frame. Where drinking water supplies are inadequate due to an event, including drought, severe weather, or contamination, potable water may be provided for a period of time, not to exceed an additional 120 days to protect public health.

18. Amend § 1778.10 by revising the section heading to read as follows:

§ 1778.10 Restrictions on use of grant funds.

* * * * *

19. Amend § 1778.11 by revising paragraph (a) to read as follows:

§ 1778.11 Maximum grants.

(a) Grants up to \$1,000,000 may be made to alleviate a significant decline in quantity or quality of water available to a rural area that occurred within two years of filing an application with the Agency, or to attempt to avoid a significant decline that is expected to occur during the twelve month period following the filing of an application.

* * * * *

PART 1784 – RURAL ALASKAN VILLAGE GRANTS

20. The authority citation for part 1784 continues to read as follows:

Authority: 7 U.S.C. 1926d

Subpart A – General Provisions.

21. Revise §1784.1 to read as follows:

§ 1784.1 Purpose.

This part sets forth the policies and procedures that will apply when the Rural Utilities Service (RUS) makes grants under the Rural Alaska Village Grant (RAVG) program (7 U.S.C. 1926d) to native villages in Alaska. The grants will be provided directly to a native village or jointly with either The State of Alaska, Department of Environmental Conservation (DEC) or The Alaska Native Tribal Health Consortium (ANTHC) for the benefit of native villages in Alaska.

22. Amend §1784.2 by removing the definition of “Rural or Native Villages in Alaska” and adding, in alphabetical order, the definition of “Native Villages in Alaska” to read as follows:

§ 1784.2 Definitions.

* * * * *

Native Villages in Alaska means a Native village in Alaska which meets the definition of a village as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

* * * * *

Subpart B – Grant Requirements

23. Amend §1784.8 by revising paragraphs (a)(1) through (3), (b), and (d) to read as follows:

§ 1784.8 Eligibility.

(a) * * *

(1) Native village in Alaska; or

(2) DEC on behalf of one or more recipient communities in Alaska; or

(3) ANTHC on behalf of one or more recipient communities in Alaska.

(b) Grants made to DEC or ANTHC may be obligated through a master letter of conditions for more than one recipient community; however, DEC or ANTHC together with each individual recipient community beneficiary shall execute a grant agreement on a project by project basis. Expenditures for projects will be based on specific scope and be requested on a project by project basis.

** * * *

(d) The median household income of the recipient community cannot exceed 110 percent of the statewide nonmetropolitan household income (SNMHI), according to US Census American Community Survey. Alaska census communities considered to be high cost isolated areas or “off the road systems” (*i.e.* communities that cannot be accessed by roads) may utilize up to 150 percent of SNMHI.

24. Amend §1784.10 by revising paragraph (a) introductory text to read as follows:

§ 1784.10 Eligible grant purposes.

* * * * *

(a) To pay reasonable costs associated with providing potable water or waste disposal services to residents of recipient communities. Reasonable costs include construction, planning, pre-development costs (including engineering, design, and rights-of-way establishment), and technical assistance as further defined in paragraphs (a)(1) through (3) of this section:

* * * * *

Subpart C – Application Processing

25. Amend §1784.16 by revising paragraph (a) to read as follows:

§ 1784.16 General.

(a) DEC and ANTHC utilize the National Indian Health Service, Sanitation Deficiency System (SDS) database as a comprehensive source of rural sanitation needs in Alaska. The database provides an inventory of the sanitation deficiencies including water, sewer, and solid waste facilities for existing homes. The sanitation deficiencies data are updated annually by DEC and ANTHC in consultation with the respective recipient communities. The SDS system is utilized in the RAVG program to help prioritize applications under the Village Safe Water Program.

* * * * *

26. Amend §1784.17 by revising paragraph (a) to read as follows:

§ 1784.17 Application for Planning grants.

(a) Entities identified in §1784.8 may submit a completed Standard Form 424 to apply for funding to establish a Planning report for a recipient community.

* * * * *

27. Amend §1784.20 by revising paragraph (a) to read as follows:

§ 1784.20 Applications Accepted from DEC or ANTHC.

(a) In cases where applications are accepted from DEC or ANTHC, one master application may be submitted covering recipient communities to be funded, however, each individual project will be broken out and (for construction grants) each will require its own PER, or PER-like document and Environmental Report.

* * * * *

Chad Rupe
Administrator
Rural Utilities Service

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